IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Crl.MC.No. 2644 of 2007()

CC.149/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM

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PETITIONER:

ABDUL KHADER,
S/O.ALI, NAMBIARVALAPPIL HOUSE,
KALACHAL, ALAMKODU P.O., MALAPPURAM JILLA.

BY ADV. SRI.T.RAVIKUMAR
SMT.G.AMBILI

RESPONDENTS:

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1. STATE OF KERALA REP.BY THE
PUBLIC PROSECUTOR (HIGH COURT OF KERALA),
ERNAKULAM.

2. NISHA KAMAL, D/O.K.K.MUSTHAFA,
KADAVANGATTU VEEDU,
KECHERI, PERUVANNU DESOM,
ERANELLOOR VILLAGE, THALAPPILLY TALUK.

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2644 of 2007

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Dated this the 20th day of August, 2007

O R D E R

The The petitioner is the sole accused in C.C. 149 of 2006 pending before the J.F.C.M. Court, Kunnamkulam. The petitioner had received notice to appear on 13.6.2007. He, a police official, could not appear on that day. Consequently a warrant of arrest has been issued by the learned Magistrate. The said warrant of arrest is chasing him.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He had no knowledge of the proceedings pending against him. He had received notice only to appear on 13.6.07. He could not appear on that day on account of reasons beyond his control. The first prayer of the petitioner is that the petitioner may be permitted to surrender before the learned Magistrate and seek regular bail. He apprehends that his application for regular bail may not be considered by the learned Magistrate on merit, in accordance with law and expeditiously.

3. The petitioner raises another grievance also. According to the petitioner, earlier the police had investigated the crime and had

filed a final report without arraying the petitioner as an accused. It is subsequently that the complainant filed the complaint arraying the petitioner as an accused. The learned counsel for the petitioner submits that the petitioner is innocent and he does not deserve to stand the trauma of the proceedings against him. At the moment and with the available materials, this court cannot attempt to resolve the disputed question as to whether the petitioner is guilty or not. The complaint is not barred by limitation. The fact that the police had investigated the crime and referred the same in so far as it relates to the petitioner is no reason to quash the protest complaint subsequently filed. I am of the opinion that it is for the petitioner to appear before the learned Magistrate and stake his claim under Section 245(2) or 245(1) Cr.P.C. for discharge or later claim acquittal. I do not find any circumstances justifying the invocation of the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. now to quash the protest complaint filed against the petitioner.

4. This Crl.M.C. is accordingly dismissed. But I may hasten to observe that if the petitioner surrenders before the learned Magistrate on or before 25.8.2007, the learned Magistrate must proceed to consider his application for bail and pass appropriate orders on merits, in accordance

with law and expeditiously - on the date of surrender itself. Till 25.8.07, it is directed that the warrant of arrest issued against the petitioner shall not be executed. Needless to say, the petitioner's claim for discharge under Section 245(2) or 245(1) Cr.P.C. must be considered by the learned Magistrate on merits and appropriate orders passed.

(R. BASANT)
Judge

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